

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2582 OF 2019

Anil Shridhar Suvarna ... Petitioner
Vs.
Chandrasahana Angara Suvarna and others ... Respondents

Ms Anita Patil i/b. Mr. Sandip J. Ghogare for Petitioner.
Mr. A. N. Nasikwala for Respondents.

CORAM : R. G. KETKAR, J.
DATE : MARCH 6, 2019

P.C. :

Not on Board. At the request of Ms Patil, taken up in the production Board.

2. Heard Ms Patil, learned Counsel for the petitioner and Mr.Nasikwala, learned Counsel for the respondents No.1 to 8 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1' has challenged the order dated 31.07.2018 passed by the Appellate Bench of the Small Causes Court at Bombay in Miscellaneous Appeal No.164 of 2018. By that order, the Appellate Court allowed the Appeal preferred by respondents No.1 to 7, hereinafter referred to as 'plaintiffs', and set aside the order dated 08.03.2018 passed by the learned trial Judge below exhibit-8 in R.A.D.Suit No.737/1172 of 2013. The Appellate Court allowed the application exhibit-8 and issued injunction restraining defendant No.1, his agents, servants and / or anyone on his behalf from parting with possession of and / or from subletting and / or from creating any third party interest and / or from disposing of and / or from alienating the premises mentioned in the plaint and injunction application i.e. 'Sadanand Hindu Hotel' Shops No.1 and 2, ground floor,

Khuda Bux Building situate at Nesbit Road, Mazgaon T.T., Mumbai 400 010 (for short 'suit premises'), or any portion thereof, in any manner till the disposal of the suit. Defendant No.2 (respondent No.9 herein) was temporarily restrained from transferring the tenancy of the suit premises to any person/s in any manner till the disposal of the suit.

3. In support of this Petition, Ms Patil has invited my attention to paragraphs 3, 4 and 10 of the plaint. In paragraph 3 of the plaint, plaintiffs came with the case that their father Angara Kuppā @ Angara Poojary @ Angara Suvarna was the monthly tenant of shops No.1 and 2, ground floor of the building known as “Khuda Bux Building” situate at Nesbit Road, Opp. Sales Tax Office, Mazgaon T.T., Mumbai 400 010 (for short 'suit premises'). The suit premises admeasures about 1200 sq.ft. The said Angara took helping hand of his elder son Shridhar Angara Suvarna (father of the defendant No.1). By reposing full faith in Shridhar, even the rent receipt came to be transferred in the name of Shridhar in respect of the suit premises. In paragraph 4, plaintiffs referred to the declaration dated 04.06.1966 executed by Shridhar. In paragraph 10, plaintiffs asserted that upon making application under Right to Information Act, 2005, they came to know that tenancy was transferred by Geeta (mother of the defendant No.1) in favour of the defendant No.1.

4. Ms Patil has also invited my attention to the written statement filed on behalf of the defendant No.1. In written statement, defendant No.1 denied the execution of the declaration made by Shridhar. It was contended that since the tenancy stood in the name of Shridhar, since inception, the question of execution the declaration did not arise. Defendant No.1 also referred to notice dated 23.05.1980 addressed on behalf of the plaintiffs through their Advocate and the reply dated

29.05.1980 given by Shridhar. In the reply, Shridhar specifically stated that he did not make any declaration. She also invited my attention to the Will dated 04.06.1966 made by Angara and Probate Petition No.1048 of 1980. Defendant No.1 contended that the alleged declaration made by Shridhar is a false and fabricated document. Ms Patil submitted that in fact the Appellate Court was not justified in issuing injunction when statement was made at the time of hearing of application under Section 9-A to the effect that defendant No.1 will not part with possession of the suit premises. She, therefore, submitted that the Appellate Court was not justified in interfering with the discretion exercised by the trial Court.

5. On the other hand, Mr. Nasikwala supported the impugned order. He has invited my attention to paragraph 6 of the trial Court's order where the learned trial Judge observed that no arguments came to be advanced on behalf of either side though sufficient chances were given and the matter was decided by the learned trial Judge. He has taken me through the declaration made by Shridhar and submitted that the Appellate Court was justified in issuing injunction.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, in paragraph 6, the learned trial Judge observed that no arguments came to be advanced though sufficient chances were given. In my opinion, if no arguments were advanced on behalf of the plaintiffs' side, the learned trial Judge, instead of deciding the application on merits, ought to have dismissed the application in default. Be that as it may, the Appellate Court considered the declaration dated 04.06.1966 made by Shridhar. Apart from that, the Appellate Court also referred to the letters of the year 1939 and 1940 as also the

leave and licence agreements of the year 1969 and 1971, which prima facie records that Angara was owner of hotel and tenant of the suit premises. The plaintiffs also produced Form E i.e. Notice of Changes along with letter issued by Shridhar to Bombay Municipal Corporation requesting transfer in his name after the death of Angara. Ms Patil submitted that in fact Shridhar was tenant since October 1960, and therefore, there was no question of his making declaration in the year 1966. The Appellate Court observed in paragraph 18 that though it was contended that Shridhar was tenant since October, 1960, the documents produced by the plaintiffs rule out such contention of defendants of carrying out such business by Shridhar since 1960 onwards. There are no documents to show that Shridhar was carrying on business in the suit premises since 1960 onwards. In paragraph 20, the Appellate Court observed that plaintiffs have raised a serious question regarding tenancy right over the suit premises, which requires to be tried and decided by this Court. The plaintiffs have established prima facie rights over the suit premises and breach of infringement of their rights by the defendants. They have further established that their rights cannot be protected without interference of the Court. There is a serious question and dispute between the parties which requires to be tried and decided by the Court. The Appellate Court accordingly issued injunction in favour of the plaintiffs.

7. In the case of ***Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727***, the Apex Court has laid down the parameters to be followed by the Appellate Court while deciding the appeal against the discretionary order. In paragraph 14, the Apex Court has observed as under,

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely

or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

8. Applying the tests laid down by the Apex Court in *Wander Limited* (supra) to the facts of the present case, I am satisfied that the Appellate Court was justified in interfering with the order passed by the trial Court. The learned trial Judge did not exercise discretion properly. The learned trial Judge ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

9. Hence, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed. It is clarified that the learned trial Judge will decide the Suit on the basis of the evidence on record and in accordance with law and uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R. G. KETKAR, J.)

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